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Supreme Court, U.S.
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No. 85-2053

In The
Supreme Court of the United States
October Term, 1985

W.J. SCHNEIDER AND K.B. MARCUS,
Petitioners,

v.

CITY OF EAST ORANGE,
Respondent,

and

ATTORNEY GENERAL OF NEW JERSEY,
Intervenor-Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

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STATEMENT OF THE CASE

Respondent does not dispute the basic factual framework set forth in Petitioner's Statement of the Case. However, Petitioner's Statement of the Case is incomplete and requires further detail.

When the 1979 real property tax assessment was made, and the tax bill was issued (pursuant to *N.J.S.* 54:4-64), the taxpayer had until August 15, 1979, the jurisdictional deadline imposed by *N.J.S.* 54:3-21, to file an appeal contesting this 1979 assessment. The assessment, under New Jersey law, was made as of October 1, 1978, pursuant to *N.J.S.* 54:4-23.

Because the real property tax assessment exceeded $750,000, this taxpayer was entitled to choose between filing a tax appeal directly with the New Jersey Tax Court, thereby bypassing the administrative body, the Essex County Board of Taxation, or to file a tax appeal petition first with the Essex County Board of Taxation and then file an appeal from any judgment that would be issued to the New Jersey Tax Court (*N.J.S.* 54:3-21; *N.J.S.* 54:2-39). The taxpayer *elected* to file a petition with the Essex County Board of Taxation challenging its real property tax assessment for the tax year 1979.

In accordance with the "Rules for the County Boards of Taxation", promulgated in the New Jersey Administrative Code, (hereinafter "N.J.A.C."), appraisals of the property were exchanged as required. An appraisal submitted on behalf of the City of East Orange valued the property at $904,600. Pursuant to a hearing held before the Essex County Board of Taxation, a judgment was issued affirming the original real property tax assessment at $825,000.

After the issuance of said judgment, petitioner had 45 days within which to perfect an appeal to the New Jersey Tax Court, pursuant to *N.J.S.* 54:2-39 (now, *N.J.S.* 54: 51A-1).

On November 13, 1979, when petitioners filed its appeal to the Tax Court of New Jersey, a portion of the real property taxes due on the third quarterly due date and all of the real property taxes due on the fourth quarterly due date, as originally assessed and as confirmed after hearing and judgment of the Essex County Board of Taxation, were due and payable but had not been paid and in fact were delinquent. (In New Jersey, real property taxes are due quarterly, with the fourth quarter being due November 1, 1979. *N.J.S.* 54:4-66).

The 1979 tax appeal was not scheduled for pretrial until January of 1982. In December, 1981, a pretrial memorandum was filed by the City of East Orange raising, among other legal issues, the issue of "timely payment of taxes".

A timely motion was subsequently filed by the City of East Orange to dismiss the 1979 complaint on the grounds of lack of jurisdiction for failure to meet the statutory tax payment prerequisite. The Tax Court dismissed the complaint and all New Jersey Courts have affirmed.

SUMMARY OF ARGUMENT

Petitioner's due process claim must be rejected. The New Jersey statutory scheme implements the "pay now, litigate later" principle which has long been approved by this Court in the field of taxation. The New Jersey stat-

ute requires that all real property taxes be current as a jurisdictional prerequisite to filing a complaint from an administrative judgment to the New Jersey Tax Court. This requirement can easily be satisfied by any responsible taxpayer, and is therefore not subject to attack.

Petitioner's equal protection claims should be rejected. Taxpayers appealing county board judgments are required to comply with a more strict tax payment requirement than those taxpayers seeking initial review at the administrative level or the New Jersey Tax Court level, because the former already have had an opportunity for a judicial-type hearing which establishes the taxes due, whereas those taxpayers seeking initial review do not have a similar opportunity.

LEGAL ARGUMENT

POINT I.

THE NEW JERSEY TAX APPEAL SCHEME COMPORTS WITH FEDERAL DUE PROCESS REQUIREMENTS IN ACCORDANCE WITH PRINCIPLES EXPRESSED BY THIS COURT MORE THAN ONE HUNDRED YEARS AGO.

In New Jersey, the procedure to challenge a real property tax assessment has been structured exclusively as a refund process. On an appeal to a county board, the board may hear the case, but may not render relief unless the taxes are paid during the time that the county board of taxation has jurisdiction. *N.J.S.* 54:3-27. *Verden Realty Mgmt. Co. v. City of East Orange*, 5 *N.J. Tax* 637 (Tax Ct. 1983); *N.J.A.C.* 18:12A-1.6(d).

After full quasi-judicial hearing before the county board of taxation a dissatisfied taxpayer may file an ap-

peal from a county board judgment, so long as it is filed within 45 days and all taxes then due have been paid.

If the taxpayer files a complaint seeking review of a county board of taxation judgment and it does not perfect the tax appeal because of its failure to pay all of the real property taxes then due and payable, jurisdiction in the New Jersey Tax Court is lost, and the appeal is subject to dismissal. This sanction is a result of the taxpayer's failure to comply with the statutory prerequisites to perfecting a tax appeal in New Jersey. These real property taxes are otherwise normally due, pursuant to *N.J.S.* 54:4-66. A taxpayer and property owner who complies with his civic obligation to timely pay his real property taxes on the quarterly due date can never be subject to dismissal for lack of jurisdiction on the basis of non-payment of taxes. It is only those taxpayers who become delinquent by withholding funds otherwise due to the municipality who run the risk of dismissal.

This scheme of taxation is designed to promote orderly administration of local government finances, recognized by New Jersey Courts. *F.M.C. Stores Co. v. Bor. of Morris Plains,* 100 *N.J.* 418, 424-425, 495 *A*2d 1313, 1316-1317 (1985).

The tax payment requirements in the context of tax appeals are designed to discourage interruption of the flow of tax revenues during proceedings to challenge real property tax assessments. *Lecross Assoc. v. City Partners,* 168 *N.J. Super.* 96, 98-99, 401 *A*2d 1099, 1100-1101, cert. den. 81 *N.J.* 294 (1979). The legislative history preceding *N.J.S.* 54:2-39 provides that:

> " . . . Thus, this provision requires an appellant to be current in his tax payments notwithstanding the pend-

> ing appeal. This imposes no burden of prepayment of taxes on the appellant, and does not put the burden of an appellant's unpaid property taxes on other taxpayers in the taxing district—a burden reflected in the reserve for uncollected taxes, and thus in the tax rate. . . . The presumption in law in this bill is that a taxpayer is responsible for taxes assessed against him and the filing of an appeal in no way reduces or forgives that liability." [App. 1].

Petitioner's claim herein is that the New Jersey State Legislature may not require the taxpayer to pay the taxes due and payable after an initial quasi-judicial hearing as a prerequisite to continuing the litigation and that it should have an opportunity to perfect the appeal even after the statute of limitation has run. However, this Court more than 100 years ago in *Cheatham v. United States*, 92 *U.S.* 85, (1876) recognized the efficacy, wisdom, and constitutionality of a provision making tax payment a prerequisite to commencing litigation:

> "The general government has wisely made the *payment of the tax claimed* whether of customs or Internal Revenue, a *condition precedent* to a *resort* to the courts by the party against whom the tax is assessed. . . . It is essential to the honor and orderly conduct of the government that its taxes should be promptly paid, and draw backs speedily adjusted; and the *rule prescribed in this class of cases is neither arbitrary nor unreasonable.*" [92 U.S. at 89, emphasis supplied].

This Court has consistently rejected constitutional attacks upon the "pay now, litigate later" principle:

> "There is a contention that the provisions requiring an appeal to the Commissioner of Internal Revenue *after payment of tax* and giving a right to sue in case of his refusal to refund, are wanting in due process and therefore there is jurisdiction [to issue injunctive

relief prior to the assessment or collection of any tax]. *But we think it suffices to state that contention to demonstrate its entire want of merit.* [*Dodge v. Osborn*, 240 *U.S.* 118, 122 (1916)]

In *Bob Jones University v. Simon*, 416 *U.S.* 725, (1974) the Court rejected due process attacks against the requirement that the taxpayer pay the taxes first and then engage in refund litigation.

The "pay now, litigate later" principle has been consistently approved and/or applied by this Court. *Flora v. United States*, 357 *U.S.* 63, (1958), aff'd on rehearing 362 *U.S.* 145, (1960). (. . . "it is unmistakably clear that the court understood the statutes of the time to require full payment of an assessed tax as a *condition precedent to the right to sue* the collector for a refund.," 357 U.S. at 68); *Phillips v. Commissioner of Internal Revenue*, 283 *U.S.* 589 (1931). ("Specific objection is made to the provision that collection will not be stayed while the case is pending before the Circuit Court of Appeals, unless a bond is filed. As to the first of these objections, it has already been shown that the right of the United States to exact immediate payment and to relegate the taxpayer to a suit for recovery is paramount," 283 *U.S.* at 599).

This Court has also consistently found that a State taxation scheme which relegates a taxpayer to a refund suit is a "plain, speedy, and efficient" State remedy sufficient to satisfy the Federal Tax Injunction Act, 28 *U.S.C.* § 1341, and that it is an "adequate legal remedy" and thereby Federal Courts will not interfere with the State Courts. *Shelton v. Platt*, 139 *U.S.* 591 (1891). (There, the State statute required the taxpayer to pay a tax (a license tax) and to sue within 30 days after pay-

ment or be forever barred); *Matthews v. Rodgers,* 284 *U.S.* 521, 526 (1932); *Great Lakes Dredge & Dock Co. v. Huffmann,* 319 *U.S.* 293 (1943) (" . . . it is the Court's duty to withhold such relief when, as in the present case, it appears that the state legislature has provided that *on payment of any challenged tax to the appropriate state officer, the taxpayer may maintain a suit to recover it back",* 319 *U.S.* 300-301), *Rosewell v. LaSalle Nat'l Bank,* 450 *U.S.* 503, *reh den* 451 *U.S.* 1011 (1981); *California v. Grace Brethren Church,* 457 *U.S.* 393 (1982).

Rosewell, supra, concerns itself specifically with whether a State procedure for challenging real property tax assessments which required a taxpayer to institute refund litigation (without interest) was a "plain, speedy, and efficient remedy" so as to deprive the Federal Courts of jurisdiction to interfere with the State Court. The taxpayer had refused to pay the property taxes as a condition to instituting the State litigation but instead initiated a Federal action. This Court held that a State remedy is "plain, speedy, and efficient" if it "provides the taxpayer with a full hearing and judicial determination at which [the taxpayer] may raise any and all constitutional objections to the tax" [450 *U.S.* at 515]. This Court held that the application of the "pay now, litigate later" principle was satisfactory especially in light of the fact that when the Tax Injunction Act was enacted, the Legislature was well aware that refund liitgation was an exclusive remedy in many State tax systems. [450 *U.S.* at 523].

Similarly, in *California v. Grace Brethren Church, supra,* this Court rejected a challenge by California churches to a "pay now, litigate later" scheme for unemployment

taxes, finding that the procedure satisfied the requirement that the taxpayer be provided with a full hearing and judicial determination wherein the taxpayer could raise any and all constitutional objections to the tax.[1]

The lower Federal Courts have confirmed that the "pay now, litigate later" principle comports with due process. *DePauw Univ. v. Brunk,* 53 *F.*2d 647 (D.Ct. Mo. 1931) (requiring taxpayer to post a bond in double the amount of the tax, interest and penalty involved prior to litigation did not violate due process even though the taxpayer has the opportunity to litigate the tax only after he has paid the tax in a suit to recover); *District of Columbia v. Berenter,* 466 *F.*2d 367 (D.C.Cir. 1972) ("the failure of the taxpayer to pay all of the challenged taxes levied for the entire fiscal year in question prior to the time their appeal was filed deprived the Tax Court of jurisdiction . . ." [Id. at 376]); *Blackhawk Mining Co., Inc. v. Andrus,* 711 *F.*2d 753 (6th Cir. 1983). (A requirement that appeal be filed within 30 days of assessment of penalty along with the pre-payment of penalty does not violate procedural due process); *B & M Coal Corp. v.*

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[1] In *California v. Grace Brethren Church,* the taxpayer asserted that it was totally exempt from the tax and that the tax was illegal and unconstitutional from its inception. Here, the taxpayer does not challenge the tax as illegal or unconstitutional, nor does it claim that it is exempt from the tax. Rather, it claims that the quantum of the tax is excessive. Therefore, relegating this taxpayer solely to a refund procedure, is significantly less burdensome.

Office of Surface Mining Reclamation & Enforcement, 699 *F.*2d. 381 (7th Cir. 1983).[2]

Application of the tests set forth in *Matthews v. Eldridge*, 424 *U.S.* 319, 335 (1976) confirms the wisdom and propriety of this Court's consistent support of the "pay now—litigate later" principle. It is "founded in the simple philosophy derived from the experience of ages, that the payment of taxes has to be enforced by summary and stringent means against a reluctant and often adverse sentiment; and to do this successfully, other instrumentalities and other modes of procedure are necessary, than those which belong to the courts of justice", *Taylor v. Secor*, 93 *U.S.* 575 (1876).

The "private interest" that is affected is insignificant and is merely the temporary deprivation of taxpayer's money which, if it prevails, must be returned to the taxpayer within 60 days of the date of final judgment, with interest." *N.J.S.* 54:3-27.2. The requirement that the taxes be paid on a date certain merely compels the taxpayer to be diligent in asserting its rights and does no more than require the taxpayer to comport with basic tenets of good citizenship and pay its taxes in a timely manner to facilitate orderly fiscal administration, as required by *N.J.S.* 54:4-66.

There is no risk of an erroneous deprivation of any of the taxpayer's rights through this procedure. Taxpayer's temporary deprivation of its potential refund is

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[2] In analogous circumstances, this Court has upheld other types of payment prerequisites, such as filing fees, prior to the institution of litigation. *U.S. v. Kras*, 409 *U.S.* 434 (1973); *Ortwein v. Schwab*, 410 *U.S.* 656 (1973); *reh. den.* 411 *U.S.* 922 (1972).

compensated by the payment of interest. *N.J.S.* 54:3-27.2. The requirement of complying with jurisdictional prerequisites to perfecting an appeal is no more or less stringent than the requirement that an appeal be timely filed.[3]

Additional procedural safeguards would be superfluous and unnecessary in this situation. The taxpayer has a right to a full blown quasi-judicial hearing before the various county boards of taxation wherein it has the right of discovery, the right to submit appraisal reports and expert evidence and the requirement that the case be proved by competent evidence. *N.J.A.C.* 18:12A-1.8; 18:12A-1.9(h); 18:12A-1.9(e). It is entitled to this hearing without the requirement that it pay the full year's taxes and without any requirement that it pay the taxes due as a precondition to filing the petition of appeal (although it must pay the first three quarters' taxes as a condition to obtaining relief which Petitioner does not challenge in this matter).

Prior to this quasi-judicial review, the taxpayer has several other opportunities to seek a correction of the assessment. The Tax Assessor makes his assessment as of October 1st of the previous year. *N.J.S.* 54:4-23. He must file his books by January 10 of the subsequent year *N.J.S.* 54:4-35, and he must make these books open to the public after public notice, for purposes of correcting errors. *N.J.S.* 54:4-38. Shortly thereafter the county boards of

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[3] This Court has consistently upheld reasonable statutes of limitations and other jurisdictional prerequisites to commencing litigation. *Wheeler v. Jackson*, 137 *U.S.* 245, 258 (1890); *Jones v. Union Guano, Co., Inc.*, 264 U.S. 171 (1924).

taxation administratively review the books and are entitled to correct any assessment. *N.J.S.* 54:4-46. A taxpayer may communicate with a Tax Assessor or the county board of taxation to obtain relief prior to quasi-judicial hearings before the board. In fact, it is a rather common practice to negotiate with the Tax Assessor or any experts that he may hire when new assessments are proposed to be placed upon the tax rolls pursuant to a revaluation of all property within the municipality. See *N.J.A.C.* 18:12-4.11.

Only after all of the foregoing procedures, and after the taxpayer had a right to a full quasi-judicial hearing was this taxpayer confronted with the jurisdictional prerequisite that his taxes be paid on or before the date that he filed a further appeal to the Tax Court of New Jersey. (If the assessment were reduced, taxes that need be paid for purposes of further appeal are only those as determined by the county board of taxation [*Lecross v. City Partners,* 168 *N.J. Super.* at 100, 401 *A*2d. at 1101-1102]). Further, contrary to Petitioner's claim that he had no opportunity to cure, Petitioner could have easily corrected the jurisdictional defect arising from filing before payment by merely paying the tax and refiling the complaint before the period of limitations expired.

The taxpayer had full notice that his taxes were due as a condition of litigation by virtue of the statute, and upon satisfaction of this jurisdictional prerequisite, within the statutory time limitation, he was entitled to a full opportunity for hearing. Therefore, Petitioner's difficulty here is self-created, and deserves no relief. *See District of Columbia v. Berenter,* 466 *F.*2d 367 (D.C. Cir. 1972).

The "government interest" is prompt satisfaction of real property tax obligations. It is critical given the recognized fact that real property taxes are the most important source of tax revenues for municipalities. *Rosewell v. LaSalle Nat'l. Bank,* 450 *U.S.* at 527 (1981). The prepayment requirement discourages taxpayers from withholding money rightfully due to the municipalities. The statutory scheme promotes *timely* payment of taxes, a critical governmental concern long ago recognized by this Court:

> " . . . taxes are the life-blood of government, and their *prompt and certain availability* an imperious need. Time out of mind, therefore, the sovereign has resorted to more drastic means of collection . . . " *Bull v. United States,* 295 *U.S.* 247, (1935).

The foregoing procedure could not be fairer or more equitable. Petitioner's alternative, requiring the municipality to again move at the Tax Court level to enforce payment, would in fact encourage taxpayers not to make *timely* payment of taxes. They would gamble on the inevitable delay occasioned by motion procedures. This would in no way serve the obvious legislative purpose of *timely* payment of taxes and in respect of that critical governmental interest, would be a superfluous and meaningless addition to the tax foreclosure and interest penalty provisions of New Jersey law.

POINT II.

THE EQUAL PROTECTION CLAIM

A. INTRODUCTION: THE NEW JERSEY STATUTORY SCHEME

Petitioner's statement of New Jersey law is both incomplete and incorrect.

It is incomplete in failing to state that a taxpayer with an assessment of more than $750,000 has the option of obtaining a hearing before the county board of taxation or proceeding directly to the Tax Court. The election is entirely within the taxpayer's discretion and in either instance must be made before the uniformly applicable August 15th jurisdictional deadline. (*N.J.S.* 54:3-21).

Petitioners are misleading when they suggest that *N.J.S.* 54:3-27 is "non-jurisdictional". Whether called jurisdictional or not, the fact remains that under New Jersey law, if the municipality moves to dismiss the tax appeal in a situation where *N.J.S.* 54:3-27 applies, the appeal is subject to dismissal if the taxes are not paid by the return date of the motion or such additional time as the Tax Court or the county board grants. The statute is merely somewhat less strict than *N.J.S.* 54:2-39 in the sense that the latter requires payment as a prerequisite to filing the appeal.

It can be seen that in New Jersey, the statutory scheme is one of perfect symmetry. *All* taxpayers who appeal from a county board of taxation judgment are required to comply with the requirement that taxes due and payable must be paid as a condition to *instituting* the litigation. All taxpayers who seek an initial level of review by appeal-

ing to the county board of taxation or directly to the Tax Court are confronted with the tax payment requirements of *N.J.S.* 54:3-27. Taxpayers whose assessments exceed $750,000 are afforded the option of filing directly to the Tax Court or filing first with the county board and then the Tax Court.

Consistent with the statutory scheme, taxpayers who file directly with the Tax Court, not having a prior opportunity for judicial or quasi-judicial review, are not required to comply with the more strict tax payment requirements of *N.J.S.* 54:2-39 but instead are required to comply with the tax payment requirements of *N.J.S.* 54:3-27 which, although less strict, nevertheless subject the taxpayer to dismissal if the first three quarters' taxes are not paid.

B. PETITIONER LACKS STANDING TO RAISE THE EQUAL PROTECTION ARGUMENT.

It is readily apparent from Petitioner's "Statement of Questions Presented" that it is asserting the rights of a New Jersey owner of real property assessed at under $750,000. Petitioner, however, is not such a property owner. Petitioner's assessment exceeded $750,000 and he had the option of proceeding directly to the Tax Court (where he is required to file by August 15 but would not obtain a hearing and determination until the following April 1, *N.J.S.* 54:51A-2), or proceeding to the county board of taxation (where he would obtain a decision within three months, *N.J.S.* 54:3-26) and, if he was dissatisfied, then appealing to the Tax Court of New Jersey.

This Court has consistently adhered to the principle that one who raises the constitutional rights of a class must be a member of that class. *E.g. Bailey v. Patterson,* 369 *U.S.* 31, 33 (1962); *Barrows v. Jackson,* 346 *U.S.* 249, 255, (1953).

In the context of an equal protection claim such as that asserted herein, this Court in *Corbitt v. New Jersey,* 439 *U.S.* 212 (1978) noted that: "Defendant faces a multitude of possible outcomes and freely makes his choice. Equal protection does not free those who make a bad assessment of risks or a bad choice from the consequences of their decision" [at 226]. See also, *U.S. v. Musto,* 540 F. *Supp.* 346 (N.J. Dist. Ct. 1982).

Here, even accepting arguendo Petitioner's view of the New Jersey statutory scheme, Petitioner is admittedly a member of the "privileged" class rather than the "burdened" class, and therefore lacks standing.

C. THE NEW JERSEY SCHEME OF TAXATION COMPLIES WITH FEDERAL EQUAL PROTECTION REQUIREMENTS.

The Legislature is obviously given the widest discretion and freedom to classify in matters of taxation. Petitioner's burden is to "make a most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . ." *Madden v. Kentucky,* 309 *U.S.* 83, 87-88 (1940).

As explained previously, all taxpayers in New Jersey are treated equally when they are similarly situated. Obviously, a taxpayer appealing from a judgment that results from a quasi-judicial hearing confirming an assess-

ment is in a significantly different position than a taxpayer whose first opportunity for judicial type review is before the Tax Court on a direct appeal.

The obvious differences supporting the different classification of appellants in different circumstances could not have been better explained than by the New Jersey Appellate Division:

> "Such a distinction has a rational basis in that the former, as contrasted with the latter class, has had the benefit of a hearing as to the correctness of the subject assessments and a determination has been made by a quasi-judicial body establishing the amount of taxes due and payable . . . These different time sequences, and the relationship of each of the procedures to the time when tax payments are due, afford reasonable support for the difference in the payment requirements applicable to an initial complaint to the Tax Court or a county board and an appeal from a county board to the Tax Court."
>
> [B-13 to B-14].

The difference in treatment rests on a single criterion, whether or not the taxpayer has had the opportunity for quasi-judicial review before the county board of taxation. The statutory scheme thus makes perfect sense and should not be disturbed.

The alleged burden on Petitioners is minute compared to the important governmental interest of timely collection of taxes, and accordingly, Petitioner's equal protection claim should be rejected.

———o———

CONCLUSION

For the reasons set forth above, the Petition for Writ of *Certiorari* presents no important federal question and raises issues that have long ago been decided by this Court adverse to the position of Petitioners, and accordingly the Petition for Writ of *Certiorari* should be denied.

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APPENDIX

SENATE REVENUE, FINANCE AND
APPROPRIATIONS COMMITTEE
STATEMENT TO

ASSEMBLY, No. 2147

[Official Court Reprint]

STATE OF NEW JERSEY

DATED: JULY 11, 1977

The purpose of this bill is to require the payment of the first three quarters of property tax by a taxpayer who files an appeal with the county board of taxation, to require full payment of current year property taxes upon appeal to the Division of Tax Appeals, and to provide for the payment of interest at a rate of 5% instead of 8% per annum on any refund of excess taxes paid as indicated in the final judgment.

Currently, a taxpayer who has filed an appeal from an assessment with the county board of taxation is required to pay 90% of taxes assessed against him for the current year in the manner prescribed in R. S. 54:4-66 (quarterly payment of property taxes). Thus, an appellant taxpayer who files an appeal, for example, on August 3 is required to pay 90% of the taxes due on Feb. 1, May 1, and Aug. 1. The appeal filed, for example, on June 15, or any time after being informed of a new assessment (usually the first week in June with the annual tax bill) would find a tax payment requirement, under the current law, of 90% of the taxes due Feb. 1 and May 1. This bill requires the first three quarters of the taxes assessed for the current tax year be paid as an absolute requirement, leaving no question open as to what amount of taxes are to be paid.

An appellant dissatisfied with the judgment of the county board of taxation may appeal that judgment to the Division of Tax Appeals. There is no direction in current law regarding tax payments. This bill would require that at the time a petition of appeal has been filed with the Division of Tax Appeals all taxes for the current year must have been paid. Appeals filed with the Division of Tax Appeals are generally after the November 1 quarterly tax installment is due and payable. Thus, this provision requires an appellant to be current in his tax payments notwithstanding the pending appeal. This imposes no burden of prepayment of taxes on the appellant, and does not put the burden of an appellant's unpaid property taxes on the other taxpayers in a taxing district—a burden referred in the reserve for uncollected taxes. and thus in the tax rate.

This bill represents a turnaround in State policy regarding payment of property taxes where an appeal is pending. The presumption in law, prior to P. L. 1973, c. 361, was that an appellant was responsible for paying only that amount of tax which he felt was reasonable as reflected in his appeal. With P. L. 1975, c. 361, a requirement that 90% of current taxes be paid was put in law. This gave rise to the disparity of amount of taxes due related to the point in time that the appeal is filed. The presumption in law in this bill is that a taxpaper is responsible for the taxes assessed against him and the filing of an appeal in no way reduces or forgives that liability.